IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

CWP. NO.589 OF 2004.

Date of Decision: 3.4.2007

Laxmi Devi . …….Petitioner.

Versus

State of H.P. & Ors. ……. Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, CJ.

The Hon'ble Mr. Justice Kuldip Singh, J.

Whether approved for reporting?

For the petitioner: Mr. R.K. Bawa, Sr. Advocate with
Mr. Rajpal Thakur, Advocate.

For respondents: Mr. M.S. Chandel, Advocate General with
No. 1 to 3 Mr. J.K. Verma, Dy. Advocate General

For respondent No.5: Mr. Ashok Sharma, Advocate.

V.K. Gupta, CJ (oral)

OA No.2091 of 2002 was filed by the writ petitioner Laxmi Devi before the learned H.P. State Administrative Tribunal, challenging the order dated 2.7.2002 whereby respondent No.5 Laxmi Devi was appointed as a part time Water Carrier in Govt. Primary School, Nohra (Madhona), Tehsil Chopal.

The ground of challenge was that respondent No.5 was not a resident of the area and therefore, she was wrongly given 10 marks on this account. If these 10 marks were deleted, the writ petitioner would stand higher in merit as compared to respondent No.5. The writ petitioner's contention was that she was actually a resident of the area and her house was hardly 15 meters from the aforesaid school. The Tribunal dismissed O.A. No.2091 of 2002 vide impugned judgment dated 13.7.2004.

On 23.10.2006 when this matter came up before us and after we had made an observation that the Tribunal did not dwell upon the aforesaid aspect relating to the ineligibility of respondent No.5 based upon

the resident factor, we got the matter enquired into from respondent No.2, Sub Divisional Officer (C), Chopal. Respondent No.2 has filed his affidavit in this Court on 12.3.2007, in which he has very clearly stated that based upon the enquiry conducted by himself , he found that respondent No.5 even though prior to November, 2001 by virtue of her being the daughter of Balak Ram was a resident of Gram Panchayat, Sarain, consequent upon her marriage on 20th December, 2001 to one Laiq Ram, she had migrated to village Dalori in Gram Panchayat Dhar Chandana. As per the enquiry, the name of respondent No.5 had been deleted from the register of Gram Panchayat Sarain and it stood entered in the records of Gram Panchayat Dhar Chandana. This was the position as on 2.7.2002 when the interview for the post of Water Carrier was held. The aforesaid enquiry reveals beyond any doubt that on the date of interview respondent No.5 was not the resident of the area in which the aforesaid school is situated. She was, therefore, ineligible for being even considered to be appointed as a part time Water Carrier. Her selection, therefore, as well as consequential appointment was invalid in the eyes of law.

In view of the aforesaid, the writ petition is allowed and the judgment passed by the Tribunal is set aside. Consequently, the selection of respondent No.5 as a part time Water Carrier is quashed and set aside. Respondents No.1 to 4 are directed to undertake fresh selection process in accordance with law and take it to its logical conclusion.

CMP No.1155/2004:

In view of the disposal of the main matter, this application is also disposed of.

(Vinod Gupta)
Chief Justice

(Kuldip Singh)
Judge

April 3, 2007(sks)